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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| SILVA HOVNANIAN,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>SARKIS MINASSIAN,<br><br>Defendant and Respondent. | B234086<br><br>(Los Angeles County<br>Super. Ct. No. BC437806) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Michael P. Rubin & Associates and Michael P. Rubin for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

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Silva Hovnanian filed an action against Sarkis Minassian involving an alleged oral contract for the re-purchase of real property. Hovnanian appeals a judgment of dismissal after the trial court sustained a demurrer to Hovnanian's first amended complaint (FAC), without leave to amend. We affirm.

## FACTS[1]

In November 2008, plaintiff Hovnanian and defendant Minassian "entered into an oral agreement" under which Hovnanian agreed to sell improved real property in Reseda to Minassian in a "short sale," so long as the lender approved. Further, Hovnanian would continue to occupy the property once Minassian took title, and Hovnanian would pay all mortgage, taxes, insurance and maintenance costs related to the property, and Hovnanian would manage and maintain the property. In exchange for Hovnanian's promises to pay costs and perform maintenance associated with the property, Minassian agreed to sell the property back to Hovnanian within two years at the price Minassian had paid in the short sale, increased by an additional $25,000.

In October 2009, Hovnanian "was ready, willing and able to buy back the . . . property from [Minassian]." In November 2009, Minassian "breached the [parties' oral] contract by refusing to sell the . . . property to [Hovnanian] on the agreed-upon terms or otherwise perform the contract."

In May 2010, Hovnanian filed a complaint against Minassian alleging the facts stated above. The complaint alleged the following causes of action, listed respectively: breach of contract; fraud, intentional infliction of emotional distress; and common counts — money paid for improvements to the property.

In January 2011, the trial court sustained Minassian's demurrer to Hovnanian's original complaint for breach of oral contract because it was barred by the statute of frauds; for fraud as it was not plead with sufficient specificity; for intentional infliction of

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[1] Because this appeal comes before us from a judgment of dismissal following an order sustaining a demurrer, we accept as true the material allegations of the operative pleading. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.) We do not accept conclusions as fact, nor do we disregard judicial admissions by way of allegations in prior pleadings.

emotional distress because it lacked sufficient facts to show extreme and outrageous conduct; and as to common count because it lacked a valid breach of contract claim.

In February 2011, Hovnanian filed her operative FAC. Hovnanian's FAC is largely identical to her original complaint, with one major exception. In lieu of alleging that the parties "entered into an oral contract" in November 2008 involving a short-sale-and-buy-back for the Reseda property, the FAC alleged that the parties "entered into a partnership agreement, partly in writing, partly oral," involving the property. The FAC alleged the partnership agreement's terms were that Hovnanian would sell the Reseda property to Minassian for $285,000. Further, that within two years, Hovnanian would have the right to buy back the property from Minassian for the agreed-upon purchase price, plus an additional $25,000, or $310,000. The FAC included a copy of the written purchase and sale agreement for the initial short sale in November 2008. The FAC alleged the following causes of action, respectively listed: breach of partnership agreement; specific performance; unjust enrichment; and fraud.

In April 2011, Minassian filed a demurrer to Hovnanian's FAC. In May 2011, the trial court sustained Minassian's demurrer without leave to amend. The trial court found the breach of oral contract was barred by the statute of frauds because the sell back was not in writing; specific performance is a remedy, not a cause of action; and the fraud was sustained without leave to amend because it was insufficiently plead. The court gave no reason for denying the unjust enrichment claim. The court ordered the case dismissed pursuant to Code of Civil Procedure section 581, subdivision (f)(1).

Hovnanian filed a timely notice of appeal.

## DISCUSSION

### I. First Cause of Action

Hovnanian contends her first cause of action for breach of contract is properly pled. We disagree.

A contract for the sale of real property is invalid unless the contract, or some note or memorandum of the contract, is in writing and subscribed by the party to be charged with the contract. (Civ. Code, § 1624, subdivision (a)(3); hereafter the statute of frauds.)

Hovnanian's FAC does not allege that a writing exists concerning the purported agreement to buy back the Reseda property from Minassian within two years of the original short sale.

Hovnanian offers two legal theories to avoid the bar of the statute of frauds. First, she argues: "A partnership agreement for the purchase of real property is not subject to the statute of frauds." Hovnanian cites *Sadugor v. Holstein* (1962) 199 Cal.App.2d 477, 480 (*Sadugor*) in support of her argument. Hovnanian misconstrues the legal authority upon which she relies. In *Sadugor*, the parties entered an oral partnership agreement pursuant to which they would purchase certain real property in Sacramento. The parties, acting in roles related to their partnership, made an offer to purchase the property from a third-party, but the offer was rejected. At about the same time, one of the partners made an offer on the property, and then purchased the property "in his own name." (*Sadugor, supra,* 199 Cal.App.2d at p. 479.) The Court of Appeal, ruling in the context of an appeal after trial, affirmed judgment in favor of the partner who had been excluded. The court ruled that the partner who had purchased the property had been acting as trustee for the other partner. *Sadugor* does not support the proposition implicitly made by Hovnanian here, which is that any or either of the underlying purchase and sale agreements for the property involved in *Sadugor* (i.e., the rejected deal or the closed deal) would have been valid and enforceable had they been oral. Regardless of whatever partnership rights may exist between Hovnanian and Minassian vis-à-vis the Reseda property, *Sadugor* does not support the proposition that the alleged contract for the re-purchase of the Reseda real property between Hovnanian and Minassian is valid and enforceable notwithstanding that the re-purchase contract is oral. Hovnanian's FAC does not allege a claim that Minassian holds the Reseda property in trust for the Hovnanian/Minassian partnership; Hovnanian claims that she is entitled to purchase the property for herself from Minassian.

Next, Hovnanian argues she alleged sufficient facts to show Minassian is estopped to assert the statute of frauds. We disagree. As an abstract principle of law, Hovnanian is correct that the doctrine of estoppel may be invoked to preclude a party from asserting the statute of frauds. (See *Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623 (*Monarco*).)

This principle, however, has limits on its reach. The doctrine of estoppel may be applied to prevent a fraud that would result from refusal to enforce an oral contract otherwise subject to the statute of frauds, including prevention of "the unconscionable injury that would result from denying enforcement of the contract after one party has been induced by the other seriously to change his [or her] position in reliance on the contract." (*Ibid*.) Applied here, we find Hovnanian's FAC does not allege facts showing she will suffer an "unconscionable injury" from a denial of enforcement of the alleged oral contract for the re-purchase of the Reseda property.

In *Monarco*, an 18-year-old son forewent leaving home in the 1920s, and worked on the family farm into the 1940s. He did so without wages, after being orally promised that if he agreed to stay and work, he would inherit the property by his mother's and stepfather's wills. In reliance upon the oral agreement, the son "gave up any opportunity for further education or any chance to accumulate property of his own." Then, shortly before the stepfather died, he executed a will, without informing mother or son, leaving all of his interest in the property to a granddaughter. (*Monarco, supra,* at pp. 622-623.) The stepfather's will was probated and a decree was entered distributing property to the granddaughter. The granddaughter then filed an action against mother and son to partition the property and for an accounting. The mother and son cross-complained for a determination that the granddaughter held the distributed property as a constructive trustee pursuant to the oral agreement the son, mother and stepfather had made to transfer the property by will. (*Id*. at p. 623.) Following trial, judgment was entered in favor of the mother and son, and against the granddaughter. The Court of Appeal affirmed the judgment, ruling that the oral agreement to leave property to the son by will fell outside the statute of frauds as a result of estoppel arising from unjust enrichment in favor of the deceased stepfather. (*Id*. at pp. 623-627.) Basically, the Court of Appeal affirmed a decision that the stepfather had received decades' worth of work from the son in reliance upon an oral agreement to transfer the property to son, and that stepfather would be held to the oral agreement.

In Hovnanian's current case, there is no unconscionable injury alleged as between her and Minassian. Indeed, Hovnanian's pleadings show Minassian helped Hovnanian to escape from being "upside-down" on the Reseda property by purchasing the property in a short-sale, with the approval of Hovnanian's lenders. If anything, enforcing the alleged oral contract in this case would basically allow Hovnanian to benefit by regaining ownership of the property, by series of "straw man"-like transactions, without having to pay off the full amount of money that she owed to her original lenders. Denying such a benefit to Hovnanian will not result in an unconscionable injury. To the extent Hovnanian alleges that she paid the mortgage, insurance and maintenance costs for the property for a period of time following the short sale, she does not allege that such costs were unconscionably favorable to Minassian. Hovnanian had the benefit of living in the property during the same time. Here, the alleged "injury circumstances," if any, do not rise to the same level of unconscionable injury as would have been suffered in *Monarco*, and do not rise to the level for invoking the doctrine of estoppels.

**II. Second Cause of Action**

Hovnanian contends that she was not required to obtain leave of court to allege her second "cause of action" for specific performance. Even if we were to assume that Hovnanian is correct, she has not shown that the trial court's ruling on Minassian's demurrer as to her second cause of action was erroneous. Specific performance is a *remedy* for breach of contract, and not a cognizable legal *cause of action* for breach of contract. Because, as explained above, Hovnanian has failed to allege a valid and enforceable oral contract for the re-purchase of the Reseda property, she has failed to allege a "cause of action" allowing for the specific performance of such a contract.

**III. Third Cause of Action**

Hovnanian contends her third cause of action for unjust enrichment is properly pled. We disagree.

A cause of action for unjust enrichment contemplates a right to restitution where a person obtains a benefit that he may not justly retain because he has been unjustly enriched. In such circumstances, the law recognizes an obligation in quasi-contract to

restore the conferring party to a former position by compelling return of the benefit conferred or its equivalent in money. (See, e.g., *Holmes v. Steele* (1969) 269 Cal.App.2d 675.) Although Hovnanian's FAC alleges she paid mortgage, insurance and maintenance costs for the Reseda property, she has not alleged facts showing unjust enrichment obtained and retained by Minassian. Hovnanian had the benefit of living in the property during the same time. The FAC does not allege facts showing an "unjust" transfer of money from Hovnanian to Minassian.

**IV. Fourth Cause of Action**

Hovnanian contends her fourth cause of action for fraud is properly pled. Because Hovnanian's eight-line argument in her opening brief on appeal does not include a single reference to the facts that are alleged in her FAC, nor a single citation to legal authority, we summarily reject her claim the trial court erred in sustaining Minassian's demurrer to the fraud cause of action. It is well settled that we must presume the trial court's ruling is correct, and that error must be affirmatively shown on appeal. (*Gee v. American Realty & Construction, Inc*. (2002) 99 Cal.App.4th 1412, 1416.) Not only is this a general rule of appellate practice, it is an ingredient of the constitutional doctrine of reversible error. (*Ibid*.) Where an appellant has not shown error, we will not reverse.

**DISPOSITION**

The judgment of dismissal is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.